

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Joel Mentor	Team: Team # 6	CCRB Case #: 200504839	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/04/2005 3:05 PM	Location of Incident: A street.	Precinct: 34	18 Mo. SOL 11/4/2006	EO SOL 11/4/2006	
Date/Time CV Reported Wed, 05/04/2005 3:16 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 05/04/2005 3:16 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Harvin Hart	00829	924670	034 PCT
2. SGT Juan Hernandez	03610	902705	034 PCT
3. POM Fabio Nunez	01432	925839	034 PCT
4. POM Roberto Garcia	31188	920318	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Harvin Hart	Abuse: PO Harvin Hart frisked and searched § 87(2)(b)	
B.POM Harvin Hart	Discourtesy: PO Harvin Hart grabbed § 87(2)(b)'s genitals.	
C.POM Harvin Hart	Abuse: PO Harvin Hart frisked § 87(2)(b)	
D.POM Fabio Nunez	Abuse: PO Fabio Nunez searched § 87(2)(b)'s vehicle.	
E.POM Harvin Hart	Abuse: PO Harvin Hart searched § 87(2)(b)'s vehicle.	
F.POM Roberto Garcia	Abuse: PO Roberto Garcia frisked § 87(2)(b)'s jacket.	
G.SGT Juan Hernandez	Abuse: SGT. Juan Hernandez refused to provide his name and badge number to § 87(2)(b) and § 87(2)(b)	
H.POM Harvin Hart	Abuse: PO Harvin Hart refused to provide his name and shield number to § 87(2)(b)	
I.POM Roberto Garcia	Abuse: PO Roberto Garcia refused to provide his name and shield number to § 87(2)(b)	

Synopsis

On May 4, 2005, at approximately 3:00 PM, § 87(2)(b) and his girlfriend, § 87(2)(b) were driving in a rented 2005 gray Chevrolet Monte Carlo with Maryland license plate § 87(2)(b) in the Washington Heights section of Manhattan. In the rear of the vehicle was a mutual friend, § 87(2)(b) who is also known as “§ 87(2)(b)”. While driving up Fort George Hill Road, § 87(2)(b) became involved in a dispute with a female motorist because he believed she was impeding traffic. Subsequently, an unmarked police car stopped § 87(2)(b) for a traffic violation. In the police car were Sgt. Jose Hernandez, PO Fabio Nunez, PO Roberto Garcia, and PO Harvin Hart, who are all from the 34 Precinct. In the course of the vehicle stop, PO Harvin Hart frisked and searched § 87(2)(b) and allegedly subjected § 87(2)(b) to a discourteous action (Allegations A and B). In addition, PO Hart frisked § 87(2)(b) and PO Nunez searched the vehicle (Allegations C and D). PO Hart then searched the vehicle again and PO Garcia then frisked § 87(2)(b)'s jacket (Allegation E and F). Finally, PO Hart, PO Garcia and Sgt. Hernandez allegedly refused to provide their names and badge numbers to § 87(2)(b) (Allegations G, H, and I).

§ 87(2)(g)

Summary of Complaint

On May 4, 2005, at approximately 3:16 PM, § 87(2)(b) made her complaint to the CCRB via phone. § 87(2)(b) and her co-complainant, § 87(2)(b) were interviewed separately at the CCRB on May 9, 2005. § 87(2)(g) (see enclosures #4A-4M). § 87(2)(g)

On May 4, 2005, at approximately 3:00 PM, § 87(2)(b) was driving a gray 2005 Monte Carlo (Maryland license plate # § 87(2)(b)) that he had rented two weeks earlier from an Avis rental company located near MacArthur airport in Long Island, New York. In the car with § 87(2)(b) was his girlfriend, § 87(2)(b) (who was seated in the passenger side seat), and his friend, § 87(2)(b) (who was seated in the back). Both § 87(2)(b) and § 87(2)(b) admitted to the CCRB that they had been involved in a dispute with a female motorist who was blocking traffic as they drove up Fort George Hill Road. However, they doubted that the police could have witnessed the brief incident, since they had been coming from the opposite direction. § 87(2)(b) was traveling along 193rd Street when he came to a red light. While stopped at the red light, § 87(2)(b) noticed an unmarked dark blue police Ford Crown Victoria (license plate # § 87(2)(e), § 87(2)(b)) drive by at a slow speed. The officers inside were staring at § 87(2)(b) and § 87(2)(b). The light turned green, so § 87(2)(b) turned right unto Wadsworth Avenue. However, looking in his rear view mirror, he saw the police car execute a U-turn, and pull behind him. Moments later he was pulled over.

Four Hispanic male officers exited the car. All were in uniform, and were wearing blue NYPD jackets. The four officers were later identified as PO Harvin Hart, Tax ID # 924670 (5'10-6'0, 220lbs, black hair), PO Fabio Nunez, Tax ID # 925839 (5'5, heavy build, black hair). Sgt. Juan Hernandez, Tax ID # 902705 (5'6, 200lbs, black hair), and PO Robert Garcia, Tax ID # 920318 (5'5, 170lbs, dark brown hair). § 87(2)(b) got his driver's license and car rental papers to give to the officers. He rolled down his window and handed his information to PO Hart. PO Hart grabbed the papers and immediately commanded § 87(2)(b) to exit the car. § 87(2)(b) explained that he could see no justification for being pulled over, and asked why he was being asked to exit the car. PO Hart escorted him to the back of the vehicle.

PO Hart then ordered § 87(2)(b) to spread his legs and place his hands against the trunk of the car. PO Hart searched inside his pockets and socks. § 87(2)(b) told PO Hart that he was, “Too

close,” as he searched him. PO Hart responded, “You want to see close?” He then proceeded to push his groin into § 87(2)(b) back, kicked his legs further apart, and then reached between his legs and grabbed his genitals. Shocked, § 87(2)(b) raised his hands as if to signal, “What’s going on?” PO Hart yelled, “Don’t move!” and slammed his hands down against the trunk. § 87(2)(b) lifted his hands slightly again twice more, and both times they were slammed down by PO Hart. At this point § 87(2)(b) asked PO Hart, who looked familiar, if he knew him from school. PO Hart responded, “Junior High school right?” He did not elaborate. When he finished with § 87(2)(b) he ordered § 87(2)(b) out of the car. He then frisked § 87(2)(b). While this was occurring, one officer was standing behind PO Hart, and the other two were covering the passenger side of the vehicle.

PO Hart then told § 87(2)(b) and § 87(2)(b) to stand still, and proceeded to search the front driver side of the vehicle. PO Nunez then told § 87(2)(b) to exit the vehicle also. At this point § 87(2)(b) got on her cell phone and called the CCRB to inform them of the situation. PO Nunez made a motion as if he were about to search § 87(2)(b). § 87(2)(b) told the officers, “you need a female officer to search my girl!” The officer then asked for § 87(2)(b)’s jacket, which she handed to him. PO Nunez searched the jacket. PO Nunez then got into the vehicle on the passenger side to conduct a search. PO Hart had § 87(2)(b) turn around and face the police car, which was parked behind § 87(2)(b)’s rental car. § 87(2)(b) was therefore unable to observe the rest of the vehicle search. Some pedestrians began congregating at the scene, and § 87(2)(b) told them to stay so they could be witnesses. The officers then told the onlookers to, “Keep it moving.”

After the four officers finished searching, they walked back to, and got into, their vehicle. The officers sat there for awhile. They would get out of the vehicle, look around, and then get back into the vehicle. This pattern was held for a couple of minutes. § 87(2)(b) tried to walk up to the vehicle in order to get the officers names’. However, they had rolled up their tinted windows to obstruct his view. Finally, PO Nunez came up to § 87(2)(b) and handed him two summonses (one for § 87(2)(b) and one for § 87(2)(b)). § 87(2)(b) said the officers never mentioned what they were looking for, neither did they question him, or anyone present, about whether or not they possessed drugs or guns. After getting back in the rental car, § 87(2)(b) noticed that the top of the side console had been broken.

§ 87(2)(b) stated she might have confused officers Nunez and Hernandez with each other. However, she and § 87(2)(b) were sure about the names of the four officers, because they both had caught glimpses of the officers’ nametags during the incident. Also, both § 87(2)(b) and § 87(2)(b) said that they would be able to recognize the officers if they were shown photos, and that would also enable them to let the CCRB know which officers had committed each specific offense.

On June 9, 2005, § 87(2)(b) and § 87(2)(b) came to the CCRB to view officer photos and identify which officers were responsible for the various actions during the incident (enclosure # 5A). § 87(2)(b) and § 87(2)(b) looked at the photos separately, and were not given time in between the viewings in which to confer and collaborate on identifications. § 87(2)(b) was presented with photo array # 1 (enclosure # 5B-5E). Officer 1A was Sgt. Juan Hernandez, Officer 1B was PO Harvin Hart, Officer 1C was PO Fabio Nunez, and Officer 1D was PO Roberto Garcia. § 87(2)(b) identified 1A as possibly the officer who had tried to search his girlfriend, § 87(2)(b). § 87(2)(b) immediately identified 1B as PO Hart and stated that he was definitely the officer who had searched him, frisked § 87(2)(b) and searched the vehicle.

§ 87(2)(b) identified 1C as the officer who had instructed one of his fellow officers to search § 87(2)(b). He was also the other officer who searched the vehicle. Finally, § 87(2)(b) identified officer 1D as the quiet officer who played a minimal role in the encounter and held § 87(2)(b)’s jacket.

§ 87(2)(b) was shown photo array # 2 (enclosure # 5F-5I). The sequence of officers was the same as photo array 1. § 87(2)(b) identified officer 2A as possibly being one of the officers on the scene, but not playing the leading role. § 87(2)(b) stated that there was a very strong possibility that officer 2B was at the scene, and was responsible for searching the car, § 87(2)(b) and § 87(2)(b). § 87(2)(b) then said there was a strong possibility that officer 2C was PO Nunez, and that he had initially searched the car before officer 2B, and was also the one who wrote and gave § 87(2)(b) the two summonses. Finally, § 87(2)(b) stated that there was a slight possibility that officer 2D was one of the officers who approached on the passenger side of the vehicle, and who held her jacket. He also was very quiet and seemed nervous when she called the CCRB on her cell phone while the incident was still unfolding.

Results of Investigation

§ 87(2)(b)

§ 87(2)(b) known as “§ 87(2)(b) or “§ 87(2)(b) to § 87(2)(b) and § 87(2)(b) was never contacted by the CCRB. § 87(2)(b) and § 87(2)(b) stated from the beginning that § 87(2)(b) did not want to get involved in the complaint because he feared retaliation by the police. On June 3, 2005, a field visit was made to his residence at § 87(2)(b) in Manhattan, and contact letters were left. § 87(2)(b) did not respond to the CCRB. § 87(2)(b) later confirmed that § 87(2)(b) does spend time at the § 87(2)(b) location. In addition to this, no other witnesses were located when a field visit was made to the incident location on June 3, 2005.

Officer Statements

PO Fabio Nunez:

PO Fabio Nunez, Tax ID # 925839, of the 34 Precinct, was interviewed at the CCRB on July 21, 2005, concerning the events of May 4, 2005 (enclosure # 6P-6T). On May 4, 2005, PO Nunez worked a tour of duty from 9:00 AM to 6:00 PM. He was in uniform and assigned to unmarked vehicle #§ 87(2)(b) (Ford Crown Victoria) He was partnered with Sgt. Juan Hernandez, PO Harvin Hart, and PO Roberto Garcia. They were assigned to the Burglary Apprehension Team (B.A.T.)

At approximately 3:00 PM, PO Nunez, who was driving, was heading northbound on St. Nicholas Avenue when he saw the complainant, § 87(2)(b) who was driving up Fort George Hill, cut off another vehicle and curse at the driver. PO Nunez alerted his partners by saying, “look at this guy!” He then made a U-turn and came behind § 87(2)(b)s vehicle. PO Nunez put on his lights and sirens in order to signal § 87(2)(b) to pull over. § 87(2)(b) did not pull over his vehicle immediately, and PO Nunez used his bullhorn, and commanded § 87(2)(b) to “pull over to the right,” and he repeated the command once more. After two blocks, § 87(2)(b) finally pulled over his vehicle on Wadsworth Avenue.

PO Nunez and PO Hart approached on the driver side of the vehicle, while Sgt. Hernandez and PO Garcia approached on the passenger side of the vehicle. PO Nunez was the initial contact officer, and he asked § 87(2)(b) for his license and registration. § 87(2)(b) said, “what the fuck are you stopping me for?” PO Nunez repeated his request, and § 87(2)(b) gave the same response. PO Nunez said that § 87(2)(b) was also flailing his arms around as he spoke, and also moved his hands around his seat and waist area. At this point, PO Hart intervened and told § 87(2)(b) to exit the vehicle. § 87(2)(b) complied, and as he got out, finally handed his license and registration to PO Nunez. PO Nunez saw that a woman was sitting next to § 87(2)(b) and that another man was sitting in the back seat.

PO Nunez then walked back to his patrol car, which was parked approximately five feet behind § 87(2)(b)s vehicle. While seated in the patrol car, PO Nunez ran § 87(2)(b)s license for open warrants and then wrote him two summonses, one for reckless driving, and the other for disobeying a lawful order. PO Nunez never searched § 87(2)(b)s vehicle, nor did he witness any of his three fellow officers frisk the occupants of the stopped vehicle, or search the car itself. A crowd gathered around to watch the incident, but no one tried to become involved in the situation. PO Nunez looked up briefly to ensure that the other officers were okay. He also saw the female occupant with a cell phone. The other officers came to the vehicle, and PO Hart prepared UF-250 reports, though PO Nunez was unaware as to what specific actions he had done as to have reason to file them. § 87(2)(b) came up to the officers’ vehicle (by the front passenger side window), and taunted the officers by saying, “do you need a pen.” After a while, he walked back to his vehicle.

PO Nunez then got out of the vehicle, followed by his partners, and gave § 87(2)(b) his two summonses. At this point, the lady in the car was writing down the names and badge numbers of the officers. § 87(2)(b) asked PO Nunez what his name and badge number was. PO Nunez gave his name and said that the rest of his information was on the summonses. The two summonses PO Nunez issued to § 87(2)(b) were summons #§ 87(2)(b) § 87(2)(b) enclosure # 6P), which states that the ticket was issued at 3:17 PM on May 4, 2005. It also notes that the violation occurred in front of 390 Wadsworth Avenue. The car is described as a sedan with Maryland license plate # § 87(2)(b) The offender

is listed as § 87(2)(b) is charged with violating § 87(2)(b) Summons # § 87(2)(b) (§ 87(2)(b) enclosure # 6P), contains the same information in regards to the time and location of the stop. § 87(2)(b) is charged with violating § 87(2)(b) (enclosure # 1A). PO Nunez presented the CCRB investigator with copies of the summonses during his interview.

PO Harvin Hart:

PO Harvin Hart, Tax ID # 924670, of the 34 Precinct, was interviewed at the CCRB on June 28, 2005, concerning the events of May 4, 2005 (enclosure # 6A-6I). On May 4, 2005, PO Hart worked a tour of duty from 9:30 AM until 6:00 PM. He was in uniform and assigned to unmarked patrol car # § 87(2)(b) (a dark blue Ford), along with three partners, PO Nunez, Tax ID # 925859, PO Garcia, Tax ID # 920318, and SGT Hernandez, Tax ID # 902705. Together, they comprised the Precinct's Burglary Apprehension Team (B.A.T).

PO Harvin Hart read the entry from his memo book that related to the incident in question (enclosure # 6D-6F). It stated that at 3:17 PM the officers effected a vehicle stop at 390 Wadsworth Avenue. Three occupants were in the vehicle, and UF-250s (enclosure # 6A-6C) were prepared for all three of them, since two, § 87(2)(b) and § 87(2)(b) were frisked. The occupants were listed as a § 87(2)(b) and an unknown white female who refused to provide identification. PO Nunez issued two summonses (the UF-250 does not specify what the summonses were for).

On May 4, 2005, at approximately 3:00 PM, PO Hart stated that his team was driving northbound on St. Nicholas Avenue. PO Nunez was driving, while Sgt. Hernandez sat in the front passenger seat. PO Hart sat in the rear driver side seat, and PO Garcia sat in the rear passenger side seat. While driving PO Hart heard PO Nunez exclaim, "Look at this guy!" Then PO Nunez executed a U-turn and immediately put on his lights. They were now headed southbound behind a dark colored vehicle that was traveling approximately 40-45mph. At this point PO Hart did not know the exact reason why PO Nunez was following the vehicle. PO Hart said that no cars were in between the patrol car and the other vehicle. PO Hart could see three people in the car, and he could see the driver looking back. The car did not stop, however, and PO Nunez went over the speakers. PO Hart could not recall PO Nunez's exact words, but he ordered the vehicle to pull over.

After about two blocks, the car stopped in front of 390 Wadsworth Avenue. All the officers exited the car, POs Nunez and Hart approached on the driver side, Sgt. Hernandez and PO Garcia on the passenger side. PO Nunez initially took the lead and asked § 87(2)(b) for his license and registration. § 87(2)(b) was belligerent from the beginning and yelled, "What the fuck are you stopping me for?" He repeated this several times. PO Nunez asked again, and § 87(2)(b) was still non-compliant. At this point PO Hart intervened and told § 87(2)(b) to exit the vehicle. § 87(2)(b) continued using profanity, saying things such as, "Why do I have to get out the fucking car?" PO Hart told him too get out of the car because he did not want to have to use force. Finally § 87(2)(b) got out of the car.

As he got out, § 87(2)(b) immediately told PO Hart, "I know you from high school. I know you from § 87(2)(b), why are you fucking stopping me? You're only acting this way because you have a badge now." PO Hart stated that he had never seen the complainant before that day, and that he did not attend § 87(2)(b). § 87(2)(b) was also waving his hands around wildly as he talked, so PO Hart directed him to go to the back of the car in order to be frisked. PO Hart said that § 87(2)(b)'s behavior was very aggressive, and made him fear for his life. PO Hart thought that § 87(2)(b) was trying to "challenge him." PO Hart stated that § 87(2)(b) was gesturing a lot with his hands as he talked, and it made him nervous. The vehicle's other two occupants were still in the car. PO Hart frisked § 87(2)(b) but he did not go into his pockets. § 87(2)(b) continued to be obstructive, by continually moving his hands and trying to turn around. PO Hart stated that § 87(2)(b) did not complain that he was too close to him, and PO Hart denied grabbing § 87(2)(b)'s genitals and saying, "I'll show you too close."

§ 87(2)(b) was then asked out the car, and PO Hart described his demeanor as calm, cooperative, and apologetic. He told the officers that he knew they were just doing their jobs. § 87(2)(b) also told § 87(2)(b) to calm down. § 87(2)(b) said something to the effect of, "fuck them." PO Hart then frisked § 87(2)(b) but did not search his pockets. PO Hart admitted to conducting a limited search of § 87(2)(b)'s vehicle. PO Hart emphasized that he did this before allowing the complainants to get back in the vehicle, so they could not surprise the officers afterwards and pull out weapons. PO Hart

said that he searched the “lungable areas where the driver could have placed a weapon.” Though he did not recall looking inside the center storage area, or the glove compartment, he did say that those were most likely areas that he did search.

PO Hart said that there was an unidentified white female who was 5’3, approximately 180lbs who refused to produce identification. She was asked out of the car, but was not frisked, because her relatively tight clothing showed that she was not concealing a weapon. PO Garcia did hold her jacket and patted it down quickly for weapons. PO Nunez then wrote § 87(2)(b) two summonses, one for reckless driving and another one for an offense PO Hart could not recall. PO Nunez later told PO Hart that he had observed § 87(2)(b) cutting across lanes recklessly and arguing with a fellow motorist who he had bypassed. The unidentified female then went around writing down the names of the officers. She did not, however, ask for the officers’ names and badge numbers directly. The unidentified female was on the phone with the CCRB and was reading the badge numbers of the officers present to whomever was on the line. PO Hart then explained to the CCRB investigator that in a previous car stop, a motorist had lunged at PO Nunez, and had to be subdued. Later on, a search of the suspect’s vehicle produced a handgun. PO Hart said that he had vowed not to be caught off guard in a similar situation.

PO Harvin Hart prepared three UF-250 stop, question, and frisk reports on May 4, 2005, which are connected to the incident in question. Sgt. Juan Hernandez signed all three reports, serial numbers § 87(2)(b) and § 87(2)(b) respectively. UF-250 report # § 87(2)(b) was filed for § 87(2)(b). It states that the vehicle stop occurred at 3:17 PM in front of 390 Wadsworth Avenue. § 87(2)(b) was under observation for one minute before being stopped. The stop lasted for fifteen minutes. The report stated that § 87(2)(b) was involved in “actions indicative of engaging in violent crimes.” It also added that there was a reasonable suspicion that § 87(2)(b) was in possession of a weapon. § 87(2)(b) was frisked, but was not searched. It also notes that § 87(2)(b) was issued a summons for § 87(2)(b). Finally, the report states that § 87(2)(b) failed to comply with the officers’ instructions and was in close proximity to a crime location. However, PO Hart did not check the box that states that the individual frisked made “verbal threats of violence.”

UF-250 report serial # § 87(2)(b) (enclosure # 6A-6C) was filed for § 87(2)(b). It has the same information as UF-250 # § 87(2)(b) in regards to the time, duration, and cause of the stop. In addition it notes that § 87(2)(b) was also involved in “actions indicative of engaging in violent crimes.” It also stated that § 87(2)(b) failed to comply with officers’ instructions and was in close proximity to a crime location. The report indicated that § 87(2)(b) was frisked, but was not searched. UF-250 report serial # § 87(2)(b) (enclosure # 6A-6C), was filed for an “unknown,” who refused to present identification, but was described as a White female, 5’3 tall, and approximately 180lbs. This unidentified woman was also involved in “actions indicative of engaging in a violent crimes,” and was in close proximity to a crime location. However, she was not frisked or searched.

Sgt. Juan Hernandez:

Sgt. Hernandez, Tax ID # 902705, of the 34 Precinct was interviewed at the CCRB on July 1, 2005, concerning the events of May 4, 2005 (enclosure # 6I-6J). On May 4, 2005, Sgt. Hernandez worked a tour of duty from 9:00 AM until 6:00 PM. He was assigned to act as supervisor of the 34 Precinct’s Burglary Apprehension Team (BAT). He was partnered with PO Hart, PO Nunez, and PO Garcia. They were assigned to unmarked patrol car # § 87(2)(b) (dark Blue Ford Crown Victoria).

On May 4, 2005, at approximately 3:00 PM, Sgt. Hernandez’ unit was driving northbound on St. Nicholas Avenue. PO Nunez was driving, Sgt. Hernandez was in the passenger seat, and PO Hart was in the rear driver side seat, while PO Garcia was in the rear passenger side seat. PO Nunez said, “look at this guy!” Sgt. Hernandez saw a male § 87(2)(b) driver cut off another vehicle driven by a female motorist. § 87(2)(b) was swerving across lanes and yelling out his window at the female motorist. PO Nunez immediately put on his lights and sirens, and made a U-turn in order to pursue § 87(2)(b). However, Sgt. Hernandez said that PO Nunez did not use his loudspeaker. § 87(2)(b) did not initially comply and drove on for nearly two blocks before pulling over on Wadsworth Avenue. Sgt. Hernandez also said that while pursuing § 87(2)(b) he could see the driver looking back at their car and a male in the back seat bending down.

When the car pulled over, the officers parked behind it and exited their vehicle. PO Hart and PO Nunez approached on the driver side, while Sgt. Hernandez approached on the passenger side, followed by PO Garcia. Sgt. Hernandez said that PO Hart took the lead in communicating with § 87(2)(b).

§ 87(2)(b) was combative from the initial moments of the encounter. The first thing he told the officers was, “why the fuck are you stopping me?” § 87(2)(b) also told PO Hart that he would beat him up if he had not been in uniform. Sgt. Hernandez also noted that there was a male passenger in the back seat § 87(2)(b) and a female passenger § 87(2)(b) in the front seat. PO Hart directed § 87(2)(b) to the back of the vehicle and frisked him for weapons, however, Sgt. Hernandez did not see if PO Hart searched inside of § 87(2)(b)'s pockets. § 87(2)(b) was moving around and trying to lift up his hands while PO Hart tried to frisk him. PO Hart then had § 87(2)(b) exit the car. Sgt. Hernandez stated that § 87(2)(b) was very apologetic and told the officers that he understood that they were doing their job and that he was sorry for his friend's behavior. PO Hart then frisked § 87(2)(b) for weapons. § 87(2)(b) was also asked out of the vehicle, and PO Garcia patted down a jacket that she was carrying. No one attempted to frisk § 87(2)(b) and she was already calling the CCRB on her cell phone.

PO Hart then searched § 87(2)(b)'s car for weapons for approximately thirty seconds. However, Sgt. Hernandez could not recall the exact parameters, or extent of, the search. Sgt. Hernandez said that § 87(2)(b) was still cursing and drawing attention to the scene. Sgt. Hernandez also said that he believed the frisks and vehicle search was justified by § 87(2)(b)'s hesitation to stop his car, and also the movements of § 87(2)(b) in the back seat. This made it look like the vehicle occupants had something to hide. Sgt. Hernandez then had his officers go back to their vehicle. A sizeable crowd had gathered to watch the event unfold. Back in the car, Sgt. Hernandez told his officers that they would just quickly do the necessary paper work and leave the scene, because § 87(2)(b) seemed to want to escalate the situation and cause greater trouble.

PO Roberto Garcia:

PO Roberto Garcia, Tax ID # 920318, of the 34 Precinct, was interviewed at the CCRB on July 13, 2005, concerning the events of May 4, 2005 (enclosure # 6K-6O). On May 4, 2005, PO Garcia worked a tour of duty from 9:30 AM to 6:05 PM. He was in uniform and assigned to unmarked vehicle # § 87(2)(b) which is a dark colored Ford Crown Victoria. He was partnered with Sgt. Juan Hernandez, PO Harvin Hart, and PO Fabio Nunez. Together they constituted the Burglary Apprehension Team (B.A.T.) for the 34 Precinct.

On May 4, 2005, at approximately 3:05 PM, the officers were driving northbound on St. Nicholas Avenue when PO Garcia, who was sitting in the rear passenger side seat, heard the driver, PO Nunez, exclaim, “Look at this guy!” PO Nunez then put the car in a U-turn and put on his light and sirens. PO Garcia said that the officers did not use a loudspeaker. After about two blocks, the car pulled over on Wadsworth Avenue. At this point PO Garcia stated that he was unaware as to what had prompted PO Nunez to execute the vehicle stop. PO Nunez and PO Hart approached the vehicle on the driver side and Sgt. Hernandez and PO Garcia approached on the passenger side of the vehicle. The driver of the vehicle § 87(2)(b) was waving his hand around at PO Hart and PO Nunez, but PO Garcia could not hear if he was using profanities against the officers. After about thirty seconds PO Hart told the driver to exit the vehicle. PO Garcia was now standing to the rear passenger side of the vehicle.

When § 87(2)(b) got out, he was still moving around his hands, but PO Garcia did not hear him using profanity. PO Hart directed § 87(2)(b) to the rear of the vehicle, and had him place his hands on the trunk. PO Hart then frisked § 87(2)(b) who kept moving around, and trying to lift his hands. PO Hart had to push § 87(2)(b)'s hands back down on the trunk several times. PO Garcia stated that there was also a male occupant in the backseat of the car, and a female occupant in the front passenger seat. The two other passengers were then told to exit the vehicle. PO Hart got identification from the male passenger, who was very calm. PO Garcia did not see the male passenger get frisked, and stated that he did not believe that he was frisked during the incident. The female occupant, however, was agitated, and was already calling the CCRB on her cell phone before she even got out of the vehicle. § 87(2)(b) was yelling, though PO Garcia could not recall what she was saying, nor could he recall her using profanity. Sgt. Hernandez asked § 87(2)(b) to hand over a jacket that she had in her hand, and when she did, Sgt. Hernandez passed it over to PO Garcia. PO Garcia patted down the jacket for weapons, and then passed it back to § 87(2)(b).

After PO Hart had frisked § 87(2)(b) he looked inside the car through the driver side door. Half of PO Hart's body was in the car for approximately thirty seconds, though PO Garcia could not see exactly what he was doing. After PO Hart concluded his search, the occupants were told that they could get back in the car. The officers then all returned to their patrol car, so that the summonses and UF-250 frisk

reports could be prepared. While the officers were in the car, PO Nunez told PO Garcia that § 87(2)(b) had cursed at him, saying, “why the fuck are you stopping me?” He then told the officers how he had witnessed § 87(2)(b) cut off another vehicle while he was driving up Fort George Hill, and had nearly hit the other car. § 87(2)(b) had then yelled out his window at the other motorist. Meanwhile, § 87(2)(b) and § 87(2)(b) had walked up to the officers, who were still in the vehicle. § 87(2)(b) approached Sgt. Hernandez, who was sitting in the front passenger side seat, and was holding up a pen by the window. § 87(2)(b) was looking at their names and badge numbers, writing it down, and repeating it on the phone to the CCRB.

Police Document:

The police document that was analyzed in connection with this case is the 34-precinct roll call for tour 2 on May 4, 2005 (enclosure # 7A-7B). The roll call shows that Sgt. Hernandez was assigned as the B.A.T. supervisor for the 34 precinct during tour 2 on May 4, 2005. His team consisted of PO Hart, PO Nunez and PO Garcia. They were scheduled to work a tour of duty from 9:30 AM until 6:05 PM.

Diagram and Map Analysis:

§ 87(2)(b) drew a diagram on June 9, 2005, (enclosure # 4F), that depicted the layout of the scene where his car was stopped by the police on May 4, 2005. The diagram shows that § 87(2)(b) was stopped at red light at an intersection when the police passed him going in the opposite direction. The diagram then shows that § 87(2)(b) made a right turn at the intersection and stopped. The street is Wadsworth Avenue and the traffic light stands at the intersection of West 193rd Street, St. Nicholas Avenue and Wadsworth Avenue. There is a map on the same page as the diagram that shows all the streets that are referenced in the incident. A chart obtained through the Geo-support Online Address Translator (GOAT) system (enclosure # 1N-1O) shows that the distance between the 193rd Street intersection and Wadsworth Avenue to be 84 feet. A field visit to the location on June 3, 2005, confirmed the relatively short distances involved. The distance that § 87(2)(b) traveled while being followed by police on May 4, 2005 was equivalent to less than one city block.

Complainants’ CCRB Histories:

Neither § 87(2)(b) nor § 87(2)(b) has made prior CCRB complaints (enclosure # 3A-3B).

Officers’ CCRB Histories:

The only subject officer with a previous substantiated CCRB case is PO Robert Garcia, from CCRB case # 200401596. PO Roberto Garcia received instructions for improperly stopping and questioning a civilian (enclosure # 2A).

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Conclusions and Recommendations

Officer Identification:

The four subject officers in this case were identified by matching the names provided to the CCRB by § 87(2)(b) and § 87(2)(b) with the officer roster of the 34 Precinct in the CTS database. The

names were then confirmed through the 34-Precinct roll call for tour 2 on May 4, 2005 (enclosure # 7A-7B), and the officers' own admissions and memo book entries.

Undisputed Facts:

The undisputed facts of this case, which are attested to by both parties, are as follows: PO Harvin Hart frisked § 87(2)(b) and § 87(2)(b) PO Roberto Garcia frisked § 87(2)(b)'s jacket. PO Harvin Hart also searched § 87(2)(b)'s rental vehicle.

Disputed Facts:

§ 87(2)(g)
[Redacted text block]

Credibility Analysis:

§ 87(2)(g)
[Redacted text block]

Allegation A: PO Harvin Hart frisked and searched § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D: PO Fabio Nunez searched § 87(2)(b) s vehicle.

PO Nunez denied searching § 87(2)(b)'s rental vehicle on May 4, 2005. However, § 87(2)(b) and § 87(2)(b) both claimed that PO Nunez did a quick preliminary search of the vehicle while PO Hart conducted his frisks. § 87(2)(b) was still seated in the car when PO Nunez reached in and looked around the front driver seat area. § 87(2)(g)

§ 87(2)(b) The other three officers stated that all four officers stayed together during the incident and all returned to the patrol car at the same time. PO Nunez also claimed that he did not witness the frisks and PO Hart's vehicle search. According to PO Nunez, he played a very detached and low-key role in the encounter, even though he stated that § 87(2)(b)'s behavior was cause for alarm. § 87(2)(b)

§ 87(2)(g)

Barry Kamins states that “a search incident to arrest may not be conducted where a motorist is charged with certain violations of the Vehicle and Traffic Law. When a driver is charged with a traffic infraction, an officer is not permitted to search the defendant’s person or automobile” (Kamins, Pg. 456, enclosure # 1L).§

[REDACTED] (g)
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Allegation E: PO Harvin Hart searched § 87(2)(b)'s vehicle.

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date:

